

The opinion in support of the decision being entered
today was *not* written for publication and
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES R. ALBRITTON

Appeal 2006-2757
Application 09/074,496
Technology Center 2100

Decided: March 23, 2007

Before TERRY J. OWENS, MURRIEL E. CRAWFORD, and
LINDA E. HORNER, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellant appeals from a rejection of claims 37 and 40. Claims 5-12, 24-27, 32, 33, 36, and 39, which are all of the other pending claims, stand allowable.

THE INVENTION

The Appellant claims a breakaway guardrail post. Claim 37 is illustrative:

37. A breakaway guardrail post for highway crash control systems comprising:

an upper post member having a weak impact axis and a strong impact axis;

a lower post member disposed beneath and spaced apart from said upper post member;

a connecting joint member having a first end and a second end, said first end of said joint member connected at said first end by a first fastener to said upper post member and connected at said second end by an attachment to said lower post member, said first fastener having a first failure strength less than a second failure strength of said attachment;

said first fastener having a first connector having a first failure strength and a second connector having a second failure strength; and

said first failure strength greater than said second failure strength such that upon an impact force being applied along said weak impact axis, said second connector fails and said upper post member rotates about said first connector.

THE REJECTION

Claims 37 and 40 stand rejected under 35 U.S.C. § 112, first paragraph, written description requirement.

OPINION

We reverse the aforementioned rejection.

The Examiner argues that the Appellant's original disclosure does not disclose first and second fasteners where the first fastener has first and second connectors (Answer 3).¹ The Appellant's first fastener is the combination of pivot pin 154 and shear pin 156 (fig. 4). The second fastener (and the attachment in claim 37) is the attachment between bracket 152 and lower portion 144 (fig. 4). As shown in figure 6, when shear pin 156 fails, bracket 152 remains attached to lower portion 144. Thus, the first fastener has a failure strength less than that of the second fastener (claim 40) or attachment (claim 37).

The Examiner argues that bracket 152 and lower portion 144 appear to be joined by a weld, and that a weld is not a fastener because "fasten" means "pinning, tying, or nailing" (Answer 3 and 5). "Fasten" can mean "to attach esp. by pinning, tying or nailing".² However, "fasten" also can mean "to make fast and secure" and "to fix firmly or securely".³ The Appellant's Specification does not limit the meaning of "fasten" with respect to bracket 152 and lower portion 144. Hence, the broadest reasonable interpretation of "fastener" with respect to those elements in view of the Appellant's Specification includes a weld because a weld would fix bracket 152 to lower portion 144 firmly and securely.

¹ Only claim 40 recites "second fastener". Claim 37 recites "attachment".

² Webster's New Collegiate Dictionary 417 (G. & C. Merriam 1973).

³ Webster's, supra note 2.

The Examiner argues that a weld cannot be an attachment because an attachment can be unattached, whereas a weld is permanent (Answer 5). The meanings of “attach” include “to make fast to (as by tying or gluing) < ~ a label to a package>”.⁴ The Appellant’s Specification does not limit the meaning of “attachment” to a temporary attachment. Hence, the broadest reasonable interpretation of “attachment” in view of the Appellant’s Specification includes a permanent attachment such as a weld because it would make the components fast to each other.

The Examiner argues that the Appellant’s claim requirement that the first fastener has a failure strength less than that of the attachment or second fastener between bracket 152 and lower portion 144 requires that both pivot pin 154 and shear pin 156 must fail before the attachment or second fastener fails (Answer 4-5). The Appellant’s first fastener fails when the shear pin fails and the upper post member (142) rotates about the first connector as shown in figure 6 (Specification 21: 5-14). Hence, failure of the first fastener does not require failure of pivot pin 154.

We therefore find that the Examiner has not carried the burden of establishing a *prima facie* case of lack of compliance with the 35 U.S.C. § 112, first paragraph, written description requirement.

⁴ Webster’s, *supra* note 2 at 72.

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DECISION

The rejection of claims 37 and 40 under 35 U.S.C. § 112, first paragraph, written description requirement, is reversed.

REVERSED

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